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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

NICK DANIAL MESSORE
3623 Maine Avenue
Baldwin Park, California 91706

Respondent.

Case No. 1H 2007 416

STATEMENT OF ISSUES

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs (Board).

2. On or about June 27, 2007, the Board received an application for a Respiratory Care Practitioner License from Nick Danial Messoré (Respondent). On or about June 4, 2007, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on December 18, 2007.

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4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3732, subdivision (b) of the Code states:

7. Section 3750 of the Code states:

“ . . .

“ . . . ”

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license

1 suspended or revoked, or may decline to issue a license, when the time for appeal
2 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
3 order granting probation is made suspending the imposition of sentence, irrespective
4 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
5 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
6 the verdict of guilty, or dismissing the accusation, information, or indictment.”

7 9. California Code of Regulations, Title 16, section 1399.370, states:

8 “For the purposes of denial, suspension, or revocation of a license, a crime
9 or act shall be considered to be substantially related to the qualifications, functions
10 or duties of a respiratory care practitioner, if it evidences present or potential
11 unfitness of a licensee to perform the functions authorized by his or her license or in
12 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts
13 shall include but not be limited to those involving the following:

14 “ . . .

15 “(c) Conviction of a crime involving driving under the influence or reckless
16 driving while under the influence.

17 “. . . .”

18 COST RECOVERY

19 10. Section 3753.5, subdivision (a) of the Code states:

20 "In any order issued in resolution of a disciplinary proceeding before the
21 board, the board or the administrative law judge may direct any practitioner or
22 applicant found to have committed a violation or violations of law to pay to the
23 board a sum not to exceed the costs of the investigation and prosecution of the
24 case."

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28 11. Section 3753.7 of the Code states:

1 "For purposes of the Respiratory Care Practice Act, costs of prosecution
2 shall include attorney general or other prosecuting attorney fees, expert witness fees,
3 and other administrative, filing, and service fees."

4 12. Section 3753.1, subdivision (a) of the Code states:

5 "An administrative disciplinary decision imposing terms of probation may
6 include, among other things, a requirement that the licensee-probationer pay the
7 monetary costs associated with monitoring the probation."

8 CAUSE FOR DENIAL OF APPLICATION

9 (Conviction of a Crime)

10 13. Respondent's application is subject to denial under Business and
11 Professions Code sections 3750, subdivision (d), 3752, and California Code of Regulations,
12 Title 16, section 1399.370, subdivision (c), in conjunction with Business and Professions Code
13 section 3732, subdivision (b), in that Respondent was convicted of crimes substantially related to
14 the qualifications, functions or duties of a respiratory care practitioner. The circumstances are as
15 follows:

16 August 18, 2004, Conviction in Case No. TWV043330

17 A. On or about January 3, 2004, Respondent was arrested by a San
18 Bernardino County Deputy Sheriff for driving under the influence of alcohol, and
19 driving with .08% or more blood alcohol content. The results of Respondent's
20 breath test indicated his blood alcohol level was .11%.

21 B On or about January 15, 2004, in San Bernardino County Superior
22 Court Complaint No. TWV043330, Respondent was charged with driving under the
23 influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), a
24 misdemeanor (Count 1), and driving with .08% or higher blood alcohol level, in
25 violation of Vehicle Code section 23152, subdivision (b), a misdemeanor (Count 2).

26 C. On or about August 18, 2004, Respondent was convicted upon his
27 plea of nolo contendere to driving under the influence of alcohol (Count 1). He was
28 placed on probation for three years with the following terms and conditions, among

1 others: pay fines and fees in the amount of \$1,474.00, and complete a first offender
2 alcohol program. His driving privilege was restricted for three months.

3 August 18, 2004, Conviction in Case No. TWV044815

4 D. On or about May 26, 2004, a San Bernardino County Deputy Sheriff
5 conducted a traffic stop after he observed Respondent straddling the lanes while
6 driving his vehicle. Upon contact with Respondent, the deputy sheriff smelled the
7 odor of alcohol coming from inside the vehicle. The deputy sheriff noticed that
8 Respondent's eyes were red and watery, and there was an odor of alcohol on his
9 breath. When asked if he had been drinking any alcohol, Respondent admitted that
10 he had had two beers. He failed to successfully complete the field sobriety tests.
11 The results of Respondent's breath test indicated his blood alcohol level was .13%.
12 He was arrested for driving under the influence of alcohol, and driving with .08% or
13 more blood alcohol content.

14 E. On or about June 18, 2004, in San Bernardino County Superior
15 Court Complaint No. TWV044815, Respondent was charged with driving under the
16 influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), a
17 misdemeanor (Count 1), and driving with .08% or higher blood alcohol level, in
18 violation of Vehicle Code section 23152, subdivision (b), a misdemeanor (Count 2).

19 F. On or about August 18, 2004, Respondent was convicted upon his
20 plea of nolo contendere to driving under the influence of alcohol (Count 1). He was
21 placed on probation for three years with the following terms and conditions, among
22 others: pay fines and fees in the amount of \$1,001.00, complete a multiple offender
23 alcohol program, and serve 30 days in county jail (with credit for one day). His
24 driving privilege was restricted for eighteen months. Count 2 of the complaint was
25 dismissed. On September 30, 2004, Respondent's probation was modified, and he
26 was sentenced to 29 days of electronic monitoring in lieu of custody in county jail.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the
3 matters herein alleged, and that following the hearing, the Respiratory Care Board issue a
4 decision:

5 1. Denying the application of Nick Danial Messore for a
6 Respiratory Care Practitioner License;

7 2. Directing Nick Danial Messore to pay the Respiratory Care
8 Board the costs of the investigation and enforcement of this case, and if placed on
9 probation, the costs of probation monitoring; and

10 3. Taking such other and further action as deemed necessary and
11 proper.

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13 DATED: March 26, 2008

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16 Original signed by Liane Zimmerman:
17 STEPHANIE NUNEZ
18 Executive Officer
19 Respiratory Care Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant
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